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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 340

TROY BLAND CADE,

Appellant,

Versus

STATE OF LOUISIANA,

Appellee.

On Appeal from the Supreme Court of the State of Louisiana:

PETITION FOR REHEARING

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PETITION FOR REHEARING

The petition of Troy Bland Cade, appellant herein, respectfully represents that the judgment of this Honorable Court rendered Monday, October 21, 1963 refusing appellant's appeal in the above case and also declining to review appellant's complaint by certiorari could be in error for the reasons hereinafter stated:

—1—

Appellant is charged with desecration of the flag of the United States under Section 116 of Title 14 of the Revised Statutes of Loui iana, which statute is set forth in full for the convenience of the court as follows, to-wit:

FLAG DESECRATION: R.S. 14:116

Flag desecration is the act of any person who shall intentionally, in any manner, for exhibition or display:

(1) Place or cause to be placed any word, mark, design or advertisement of any nature upon any flag; or

(2) Expose to public view any flag, upon which has been printed or otherwise produced, or to which shall have been attached any such word, mark, design, or advertisement; or

(3) Expose to public view, or have in possession for sale or any other purpose, any article of merchandise, or thing for holding or carrying merchandise, upon or to which shall have been produced or attached any flag, in order to advertise, call attention to or decorate such article; or

(4) Publicly mutilate, defile, or by word or act cast contempt upon any flag.

The word "flag" as used herein shall mean any duly authorized flag or shield of the United States or of the State of Louisiana, or any copy thereof.

Whoever commits the crime of flag desecration shall be fined not more than one hundred dollars, or imprisoned for not more than ninety days, or both.

—2—

At the time appellant was indicted the above statute came within that chapter of the criminal laws of the State of Louisiana entitled "Offenses Affecting Organized Government," which has for its purpose to punish acts of treason and disloyal acts against the government, volume 9, Page 582-585 Louisiana Revised Statutes of 1950.

—3—

This chapter was amended by the 1962 Louisiana Legislature, by Act Number 270 and R.S. 14:354-14:374 is now known as The Subversive Activities and Communist Control Law of Louisiana, (see, page 82 Cumulative Annual Pocket Part, Louisiana Revised Statutes for the Year 1963). The flag desecration statute, R.S. 14:116 was not repealed but remains in full force and effect, (see, page 60 Cumulative Annual Pocket Part, Louisiana Revised Statutes for the Year 1963.) The Louisiana Statute under which appellant was indicted, therefore, forms a part of the Subversive Activities and Communist Control Law of Louisiana.

—4—

The word "flag" as used in the statute means any duly authorized flag or shield of the United States or of the State of Louisiana, or any copy thereof. Appellant herein was not indicted for any act against any flag or shield of the State of Louisiana, but plainly indicted for desecration of the flag of the United States. The State of Louisiana in this prosecution is not seeking to protect the general peace and order of the community as such state authority is prescribed in R.S. 14:103, as amended of the Revised Statutes of Louisiana under the title (Offenses Affecting the General Peace and Order).

—5—

The Louisiana Statute, R.S. 14:116 under which appellant is indicted was enacted to control and punish subversive activities, but the State's power to enact and enforce this legislature, as to such acts against the United States has been superseded by the Congress of the United States in its enactment of the Smith Act, 18 U.S.C. § 2385. (*Pennsylvania v. Nelson*, 350 U.S. 497, 76 S. Ct. 477)

—6—

In *Nelson*, it is our judgment the following principles were established by this court when it affirmed the decision of the Pennsylvania Supreme Court:

(1) The Smith Act supersedes any State Law prohibiting the same conduct as the Smith Act, which conduct is directed against the federal government.

(2) The States do not have concurrent jurisdiction with the federal government to prosecute acts of subversion against the government of the United States.

(3) The Smith Act, does not prevent the States from protecting themselves against sabotage or attempted violence of all kinds.

—7—

Under the decision of this court in *Uphaus v. Wyman*, 360 U.S. 72, 79 S. Ct. 1040, the State of Louisiana could proceed with prosecution for sedition or act of subversion against the

state itself. Appellant contends that the charge of desecration of the flag of the United States cannot properly be considered as such act or acts against the State of Louisiana. That, accordingly the State of Louisiana is without jurisdiction to prosecute in this case.

—8—

The Supreme Court of Louisiana recognized the principle herein stated on the basis of the *Nelson* case in *State of Louisiana v. Jenkins*, 107 So. 2d 648, when said court, McCaleb, J., "held that the entire field of subversive activity has been preempted by Federal legislation, and Federal supersession has rendered State statutes as to subversive activities unenforceable and states have no power to prosecute Communist activity."

—9—

In *Wyman*, it was made clear that the decision in *Nelson* did not strip the states of rights to protect themselves. Appellant contends that here, the State is not attempting to protect itself, but is attempting to protect the Federal government as the authority of the State to protect the general peace and order of the community is prescribed in R.S. 14:103, as amended of the Revised Statutes of Louisiana.

—10—

The decision of the court in denying this appeal will have the effect of permitting state courts to prosecute acts of subversion in which their interest is not dominant and therefore could lead to a conflict between state and Federal authority in

the administration of the Federal program in the field of subversive activities.

—11—

Appellant argues that an appeal could be granted in this case for reason the power of the state to enact and to enforce antisubversive legislation, as to acts against the Uni' 1 States, has been superseded by the Congress of the Unit States in its enactment of the Smith Act, 1' U.S.C. § 238' Argue further that a writ of certiorari could issue to the upreme Court of Louisiana for reason the Louisiana Sta' e, R.S. 14:116 defining flag desecration is repugnant to the constitution, treaties or laws of the United States, par icularly the Smith Act, 18 U.S.C. § 2385.

—12—

Appellant further represents to the court that oral argument on this motion for rehearing is advisable and should be granted in order that full benefit may be had in the resolution of the question of jurisdiction involved herein.

WHEREFORE, Petitioner prays:

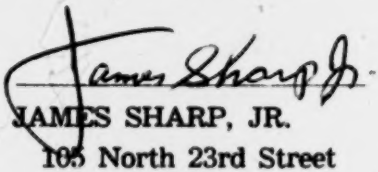
(1) That a rehearing be granted in this cause.

(2) That oral argument on this motion for rehearing be allowed and that sufficient time be allotted for argument as in the discretion of the Court is deemed advisable.

(3) That after full consideration before the Court probable jurisdiction be noted and the appeal granted.

(4) That in the alternative the matter be reviewed by certiorari pursuant to 28 U.S.C. § 2103.

Respectfully submitted,



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Monroe, Louisiana

PROOF OF SERVICE

I, James Sharp, Jr., attorney for Troy Bland Cade, appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on this the 13 day of November, 1963, I served a copy of the foregoing petition for rehearing, on State of Louisiana, appellee in connection with this appeal, by delivering the same to its counsel of record, Honorable Albin P. Lassiter, through the United States mail with first class postage affixed thereto and addressed to his office at the Ouachita Parish Court House, Monroe, Louisiana.

James Sharp, Jr.
Attorney for Appellant

CERTIFICATE

I, James Sharp, Jr., attorney for Troy Bland Cade, appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that this petition for rehearing is presented in good faith and not for delay.

James Sharp, Jr.
Attorney for Appellant

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